

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. CR-09-0247
)	PAGES 1-25
vs.)	
)	
HITACHI DISPLAYS LTD.,)	
)	SAN FRANCISCO, California
)	FRIDAY
Defendant.)	MAY 22, 2009
_____)	11:00 A.M.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	OFFICE OF UNITED STATES ATTORNEY 450 GOLDEN GATE AVE. SAN FRANCISCO, CALIFORNIA 94102 (415)436-6660 BY: David Ward
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FOR THE DEFENDANT:	MORGAN, LEWIS & BOCKIUS ONE MARKET, SPEAR STREET TOWER SAN FRANCISCO, CALIFORNIA 94105 (415)442-1309 BY: John Hemann
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FURTHER APPEARANCES ON NEXT PAGE.

REPORTED BY: SARAH L. GOEKLER, CSR NO. 13446
Proceedings recorded by computerized stenography, transcript
prepared on ProCat System by Sarah L. Goekler.

1 Friday, May 22, 2009

11:00 a.m.

2 P R O C E E D I N G S

3 **THE CLERK:** Calling criminal 09-247 United States
4 versus Hitachi Displays.

5 **MR. WARD:** Good morning, Your Honor. David Ward and
6 Lynch for the United States.

7 **THE COURT:** Good morning.

8 **MR. HEMANN:** Good morning, Your Honor. John Hemann,
9 Morgan Lewis on behalf of Hitachi Displays. And with me is
10 Kazuo Hatanaka from the company, and Ellen Travis, the
11 translator, who has been sworn.

12 **THE COURT:** Mr. Ward, it's my understanding that the
13 Government has agreed that the interpreter may perform the
14 interpretation services this morning.

15 **MR. WARD:** That's correct, Your Honor. We have no
16 objections to defendant's interpreter.

17 **THE COURT:** Likewise, the defense has proffered
18 your --

19 **MR. HEMANN:** Yes, Your Honor --

20 **THE COURT:** -- correct? Okay. Mr. Hatanaka, I
21 understand from your lawyers that you would like to change the
22 plea on behalf of Hitachi Displays Ltd. this morning; is that
23 correct, sir?

24 **THE DEFENDANT (through the interpreter):** That's
25 correct.

1 **THE COURT:** All right, sir. And before we do that, I
2 need to ask you some questions. And before you answer my
3 questions, you need to swear to tell the truth.

4 So, Tracy, would you swear Mr. Hatanaka, please.

5 **THE DEFENDANT (through the interpreter):** Yes, I do.
6 (Whereupon, the defendant was sworn.)

7 **THE COURT:** Thank you, sir. How old are you, sir.

8 **THE DEFENDANT (through the interpreter):** Sixty-one
9 years old.

10 **THE COURT:** And how far did you go in school?

11 **THE DEFENDANT (through the interpreter):** I graduated
12 from a university.

13 **THE COURT:** All right. Do you understand my
14 questions with the help of the interpreter?

15 **THE DEFENDANT (through the interpreter):** Somewhat.

16 **THE INTERPRETER:** Because English is his second
17 language, he just understands a little.

18 **THE COURT:** Okay. What I'm interested in is with the
19 help of the interpreter, do you understand everything I am
20 saying?

21 **THE DEFENDANT (through the interpreter):** Yes, I do.

22 **THE COURT:** All right. Thank you.

23 And if at any point my questions are confusing,
24 please tell me.

25 **THE DEFENDANT (through the interpreter):** I

1 understand.

2 **THE COURT:** All right. Have you had any drugs or
3 medicine or pills or drunk any alcoholic beverages in the last
4 24 hours?

5 **THE DEFENDANT (through the interpreter):** I had a
6 little bit of wine at dinner last night.

7 **THE COURT:** Are you clear-headed this morning?

8 **THE DEFENDANT (through the interpreter):** Yes, I'm
9 fine, Your Honor.

10 **THE COURT:** Thank you. Does either counsel have any
11 reason to question Mr. Hatanaka's competence to enter this
12 plea?

13 **MR. HEMANN:** No, Your Honor.

14 **MR. WARD:** No, Your Honor.

15 **THE COURT:** All right.

16 Mr. Hemann, you have provided me and Mr. Ward with a
17 resolution of the Board of Directors of Hitachi Displays Ltd.

18 **MR. HEMANN:** Yes, Your Honor. It's attached to the
19 plea agreement.

20 **THE CLERK:** Do you have the original plea agreement?

21 **MR. WARD:** I have the original plea agreement.

22 **THE CLERK:** Thank you.

23 **THE COURT:** And it reflects that the board has
24 authorized Mr. Hatanaka to speak for it in court here today and
25 to enter into the plea agreement on behalf of the corporation

1 today; is that right?

2 **MR. HEMANN:** That's correct, Your Honor.

3 **THE COURT:** And, Mr. Hatanaka, is it correct that you
4 have been authorized by the Board of Hitachi Displays Ltd. to
5 act for it here in court this morning?

6 **THE DEFENDANT (through the interpreter):** That is
7 correct.

8 **THE COURT:** So when I ask the following questions,
9 I'm asking you the question, but it really relates to the
10 company, Hitachi Displays Ltd.

11 **THE DEFENDANT (through the interpreter):** Yes.

12 **THE COURT:** Have you had enough time -- well, do you
13 understand that criminal defendants have the right to a lawyer
14 at all stages of the proceedings, including trial, if they wish
15 to go to trial?

16 **THE DEFENDANT (through the interpreter):** Yes, I
17 understand that.

18 **THE COURT:** And have you had much time to talk to
19 your lawyers about the charges that are pending against you
20 here?

21 **THE DEFENDANT (through the interpreter):** Yes. Yes,
22 I have had enough time.

23 **THE COURT:** And have your lawyers explained what the
24 Government -- what the United States Government would have to
25 prove before you could be convicted of these charges?

1 **THE DEFENDANT (through the interpreter):** Yes.

2 **THE COURT:** All right. Are you satisfied with your
3 lawyer's representation of you?

4 **THE DEFENDANT (through the interpreter):** Yes, I am
5 satisfied.

6 **THE COURT:** All right.

7 Mr. Ward, can you summarize for me and Mr. Hatanaka
8 the elements of the offense to which he's proposing the plea
9 agreement.

10 **MR. WARD:** Yes, Your Honor.

11 Hitachi Displays is charged by information with one
12 count for violating Section 1 of the Sherman Act. That's 15
13 U.S.C, Section 1. To establish such a violation, the United
14 States must prove three elements beyond a reasonable doubt.

15 One, that the defendant entered into a conspiracy.
16 Two, that the conspiracy was an unreasonable restraint of
17 trade. And then, three, that the conspiracy affected
18 interstate commerce in the United States.

19 **THE COURT:** Do you understand those are the elements
20 of this offense, sir?

21 **THE DEFENDANT (through the interpreter):** Yes, I
22 understand.

23 **THE COURT:** And do you understand that the -- what is
24 the maximum sentence for this offense to which the corporation
25 might be subjected to?

1 **MR. WARD:** Your Honor -- I'm sorry. Your Honor, the
2 maximum penalty for each violation of Section 1 of the Sherman
3 Act is, first, a fine in an amount equal to the greatest of
4 \$10 million or twice the gain or twice the loss to the victims
5 of the crime.

6 Two, there's restitution to the victims of the
7 offense.

8 Three, is a \$400 special assessment.

9 And then, four, is a term of probation of at least
10 one year, but not more than five years.

11 **THE COURT:** Do you understand those are the maximum
12 punishments available to which you may be subject in this case?

13 **THE DEFENDANT (through the interpreter):** Yes, I
14 understand.

15 **THE COURT:** All right. Do you understand that under
16 the Constitution and laws of the United States, the defendant
17 has the right to plead not guilty to these charges. And if it
18 pleads not guilty, it will be presumed innocent unless and
19 until the Government proves, beyond a reasonable doubt, that
20 it's guilty of every element of this offense beyond a
21 reasonable doubt; do you understand that?

22 **THE DEFENDANT (through the interpreter):** Yes, I
23 understand that.

24 **THE COURT:** And the defendant has a right to a jury
25 trial, and it could not be convicted at a jury trial unless all

1 12 members of the jury find that the defendant is guilty of
2 every element of the offense beyond a reasonable doubt; do you
3 understand that?

4 **THE DEFENDANT (through the interpreter):** Yes, I
5 understand that.

6 **THE COURT:** It would be up to the Government to call
7 witnesses and put on evidence to prove every element of this
8 offense; do you understand that?

9 **THE DEFENDANT (through the interpreter):** Yes, I
10 understand that.

11 **THE COURT:** Your lawyer would have the right to
12 cross-examine the Government's witnesses and challenge the
13 Government's evidence; do you understand that?

14 **THE DEFENDANT (through the interpreter):** Yes, I
15 understand that.

16 **THE COURT:** And your lawyer would have the right to
17 call witnesses to testify on behalf of the defendant to explain
18 its viewpoint of the evidence; do you understand that?

19 **THE DEFENDANT (through the interpreter):** Yes, I
20 understand that.

21 **THE COURT:** And your lawyer could challenge and
22 cross-examine the Government's witnesses; do you understand
23 that?

24 **THE DEFENDANT (through the interpreter):** Yes, I
25 understand that.

1 **THE COURT:** And if you plead guilty today on behalf
2 of the company, it gives up all these trial rights that we're
3 talking about, the right to trial by jury, the right to
4 confront the witnesses against it, and it will be found guilty
5 based on your admission here in open court that the company is
6 guilty; do you understand that?

7 **THE DEFENDANT (through the interpreter):** Yes, I
8 understand that.

9 **THE COURT:** And if you plead guilty on its behalf
10 today, it will give up the right to appeal from the finding
11 that it's guilty; do you understand that?

12 **THE DEFENDANT (through the interpreter):** Yes, I
13 understand that.

14 **THE COURT:** And the company will also give up the
15 right to appeal from anything else the Court may have done and
16 to appeal from the sentence as long as I sentence you in
17 accordance with this plea agreement; do you understand that?

18 **THE DEFENDANT (through the interpreter):** Yes, I
19 understand that.

20 **THE COURT:** Has anybody threatened you or forced you,
21 or threatened or forced the company to enter this plea today?

22 **THE DEFENDANT (through the interpreter):** No, that
23 did not happen.

24 **THE COURT:** All right. Did you and the other
25 representatives of the company have enough time to talk to the

1 lawyers about how your sentence might be computed in this case?

2 **THE DEFENDANT (through the interpreter):** Yes, I was
3 able to.

4 **THE COURT:** All right. I understand that there has
5 been -- well, I'm holding the document called "plea agreement."
6 On page 14 of this document, there is a signature line for --

7 **MR. HEMANN:** Yoshiyuki Imoto, who's the CEO of
8 Hitachi Displays, and he's authorized by the Board of
9 Resolution to sign the plea agreement.

10 **THE COURT:** Who is?

11 **MR. HEMANN:** Mr. Imoto.

12 **THE COURT:** But he's not here.

13 **MR. HEMANN:** No. There's a two-part resolution.
14 Mr. Imoto is authorized to sign and -- oh, thank you, very
15 much -- and Mr. Hatanaka is authorized to enter the plea on
16 behalf of the company.

17 **THE COURT:** Is that agreeable with the Government?

18 **MR. WARD:** It is, Your Honor.

19 **THE COURT:** Well, I guess -- what I wonder is how do
20 I know Mr. Imoto signed it?

21 **MR. HEMANN:** He recognizes his signature, Your Honor.

22 **THE COURT:** Okay. Do you recognize the signature of
23 Mr. Imoto, the chief executive officer and president of Hitachi
24 Displays Ltd?

25 **THE DEFENDANT (through the interpreter):** Yes.

1 **THE COURT:** And does that appear to you to be his
2 signature?

3 **THE DEFENDANT (through the interpreter):** It is
4 exactly his signature.

5 **THE COURT:** All right.

6 Mr. Hemann, can you summarize for me and for
7 Mr. Hatanaka the general terms of this plea agreement?

8 **MR. HEMANN:** Yes, Your Honor. Under the plea
9 agreements, Hitachi Displays is going to enter a plea of guilty
10 to a one-count information, charging the company with
11 participating in a conspiracy to suppress and eliminate
12 competition by fixing the prices of TFT-LCD panels for sale to
13 Dell Corporation for use in PCP notebook computers for a period
14 from about April 1st, 2001 to March 31st, 2004 in violation of
15 Section 1 of the Sherman Act.

16 Also, in the plea agreement, Hitachi Displays is
17 agreeing to pay a single fine of \$31 million and a special
18 assessment of \$400. The company is not, with the agreement of
19 the Government, not agreeing to a term of probation or
20 restitution, given the pendency of the civil class action
21 before Your Honor.

22 The United States, under the plea agreement, has
23 agreed that if Hitachi Displays continues to cooperate with its
24 investigation into the TFT-LCD industry, no other Hitachi
25 entity, subsidiary, affiliate will be prosecuted or any Hitachi

1 employees other than the two individuals whose names are
2 reflected in the plea agreement. Those are the material terms.

3 **THE COURT:** Is that correct, Mr. Ward?

4 **MR. WARD:** Yes, Your Honor.

5 **THE COURT:** And, Mr. Hatanaka, is that your
6 understanding of what this plea agreement provides?

7 **THE DEFENDANT (through the interpreter):** Yes, it is
8 my understanding.

9 **THE COURT:** Where would I find the names that you
10 referred to, Mr. Hemann?

11 **MR. HEMANN:** Your Honor, if you look -- and I believe
12 it's paragraph 13 of plea agreement. Let me just check to make
13 sure.

14 **MR. WARD:** 13(b), Your Honor, on page eight of the
15 plea agreement.

16 **MR. HEMANN:** Correct. The two employees, Your Honor,
17 Mr. Wakabayashi and Mr. Someya.

18 **THE COURT:** Well, where's the place where it says --

19 **MR. HEMANN:** It's actually paragraph 15. Paragraph
20 14 is the first place that the names appear. In paragraph 15
21 of the plea agreement, sets forth the Government's promise that
22 assuming cooperation by the company and all of the other
23 employees of the company, only Mr. Wakabayashi and Mr. Someya
24 may be prosecuted.

25 **MR. WARD:** Page ten of the plea agreement.

1 **THE COURT:** Okay.

2 **MR. HEMANN:** Actually, Your Honor, to be completely
3 accurate, paragraph 15 refers to no further prosecution of the
4 company. Paragraph 16(a) refers to no further prosecution to
5 any other individual by Mr. Wakabayashi and Mr. Someya.

6 **THE COURT:** All right. And the agreement is under
7 Rule (C)(1)(C), meaning that as long as I sentence him in
8 accordance with it, then nobody can change its mind; correct?

9 **MR. WARD:** That's --

10 **MR. HEMANN:** That's correct, Your Honor.

11 **THE COURT:** Okay. Mr. Ward, can you summarize for me
12 and Mr. Hatanaka what the Government would prove if this matter
13 went to trial?

14 **MR. WARD:** Yes, Your Honor. Had this case gone to
15 trial, the United States would have presented evidence
16 sufficient to prove the following facts:

17 For the purposes of this plea agreement the relevant
18 period is that period from on or about April 1st, 2001 to on or
19 about March 31st, 2004. During the relevant period, Hitachi
20 Displays Ltd. was a corporation. It was organized and existing
21 under the laws of Japan.

22 Prior to 2002, the defendant was a division of
23 Hitachi Ltd. The defendant has its headquarters and principal
24 place of business in Chiba, Japan. And during the relevant
25 period, the defendant was a producer of TFT-LCD, which refers

1 to thin-film transistor liquid crystal display, was engaged in
2 the sale of TFT-LCD in the United States and elsewhere and
3 employed between 1,000 and 5,000 individuals.

4 TFT-LCD are glass panels composed of an array of tiny
5 pixels that are electronically manipulated in order to display
6 images. TFT-LCD are manufactured in a broad range of sizes and
7 specifications for use in televisions, notebook computers,
8 desktop monitors, and mobile devices and other applications.

9 From on or about April 1st, 2001 to on or about
10 March 31st, 2004, the defendant, through its officers and
11 employees, participated in a conspiracy with other major
12 TFT-LCD producers. The primary purpose of which was to fix the
13 price of TFT-LCD sold to Dell for use in notebook computers.

14 In furtherance of the conspiracy, the defendant,
15 through its officers and employees, engaged in telephone
16 discussions and attended bilateral meetings with
17 representatives of other major TFT-LCD producers. During these
18 discussions and meetings, agreements were reached to fix the
19 price of TFT-LCD sold to Dell for use in notebook computers.

20 During the relevant period, TFT-LCD sold by one or
21 more of the conspirator firms and the equipment and supplies
22 necessary to the production and distribution of TFT-LCD, as
23 well as payments for TFT-LCD, traveled in interstate and
24 foreign trade and commerce.

25 The business activities of the defendant and its

1 coconspirators in connection with the production and sale of
2 TFT-LCD, affected by this conspiracy, were within the flow of
3 and substantially affected interstate and foreign trade and
4 commerce.

5 Finally, acts in furtherance of this conspiracy were
6 carried out within the Northern District of California.
7 TFT-LCD affected by this conspiracy were either sold by one or
8 more of the conspirators to customers in this district.

9 **THE COURT:** Mr. Hemann, do you agree the Government
10 is in a position to put on such a case?

11 **MR. HEMANN:** Yes, with emphasis, Your Honor, on the
12 fact that the plea is limited to the sale of TFT-LCDs to Dell
13 for use in PC notebook computers. As Mr. Ward articulated, we
14 don't -- we believe that he's in a position to put that case
15 on.

16 **THE COURT:** I was going to ask you about that,
17 Mr. Ward. Did Hitachi Displays sell to other companies, as
18 well?

19 **MR. WARD:** Your Honor, Hitachi Displays sold TFT to
20 numerous companies. Our evidence only indicated -- and we
21 would only be able to prove a conspiracy to sell to Dell Inc.

22 **THE COURT:** Well, they conspired with other
23 companies, did they?

24 **MR. WARD:** I'm not saying they conspired -- they
25 conspired with other companies to fix the price of TFT-LCD sold

1 to Dell.

2 They also sold TFT-LCD panels to other manufacturers,
3 but the Government does not have evidence to prove a conspiracy
4 to fix prices of TFT sold to any other customers other than
5 Dell. We would not be able to meet the proof -- specifically,
6 the jurisdictional burden to prove a case against other
7 purchases of TFT-LCD.

8 **THE COURT:** To which is the jurisdictional burden to
9 which you refer?

10 **MR. WARD:** Most of the activity, to our knowledge,
11 the defendant engaged in for sale to other customers occurred
12 outside of the United States.

13 **THE COURT:** Most of the activity?

14 **MR. WARD:** Most of the sales, the sales force, the
15 production, the shipment occurred outside of the United States.

16 **THE COURT:** Because I have taken other pleas in these
17 related cases which have involved conspiracy to fix the price
18 of the same product, and those have not been limited to Dell.

19 **MR. WARD:** That's correct, Your Honor. In other
20 cases, we had evidence to prove -- for example, in the Sharp
21 plea that there were sales to Motorola and Apple to which this
22 defendant did not sell. The conspiracy to which LG pled to and
23 CPT pled to was a related, but separate, conspiracy that did
24 not involve this defendant.

25 Our evidence showed that this defendant was involved

1 in a conspiracy to fix the prices to Dell only.

2 **MR. HEMANN:** Your Honor, the plea in this case is
3 similar to the plea in the Sharp case that the Court accepted,
4 except that this case involves a single customer rather than
5 three individual customers. Sharp didn't plead to a larger,
6 industry-wide conspiracy, either.

7 It was three specific customers, one of which was
8 Dell. They had two others. We're just agreeing to plead to a
9 conspiracy related to sales for PC notebooks to Dell. So it's
10 structured very close to the plea that Sharp entered into that
11 the Court accepted. Just one customer rather than three
12 customers.

13 **THE COURT:** I understand what you're saying. It's
14 not giving me a lot of comfort. I'm still trying to
15 understand, overall, what this means.

16 So are you suggesting that your proof is developing a
17 situation where there were many separate little conspiracies?

18 **MR. WARD:** Yes, Your Honor. We believe there was a
19 larger conspiracy involving LG and CPT and others to fix the
20 price of TFT-LCD sold to many manufacturers. The Government
21 does not believe that either Hitachi or Sharp were involved in
22 that conspiracy. We believe that Hitachi, Sharp, and other
23 unnamed coconspirators were involved in a separate conspiracy
24 amongst themselves to fix the price of TFT-LCD sold only to
25 Dell. So they're related conspiracies, but they're not the

1 same conspiracies.

2 **THE COURT:** All right. Have you heard all these
3 things that the lawyers have been saying, Mr. Hatanaka?

4 **THE DEFENDANT (through the interpreter):** Yes, I've
5 been listening.

6 **THE COURT:** And do you agree that the things that
7 Mr. Ward said that Hitachi Displays has done that those things
8 are true?

9 **THE DEFENDANT (through the interpreter):** Yes, that
10 is true.

11 **THE COURT:** All right. Please tell me in your own
12 words what Hitachi Displays Ltd. did that makes it guilty of
13 this offense.

14 **THE DEFENDANT (through the interpreter):** Yes. As
15 set forth in paragraph four of the plea agreement, Hitachi
16 Displays participated in a conspiracy involving the specified
17 sales of TFT-LCD panels to Dell during the limited time frame
18 specified.

19 **THE COURT:** And what was the point of the conspiracy,
20 the purpose?

21 **THE DEFENDANT (through the interpreter):** It was to
22 fix the prices for the TFT-LCD panels for PC notebook computers
23 sold to Dell Corporation.

24 **THE COURT:** And I apologize. I should have asked
25 this earlier. What -- Mr. Hatanaka, what is your title or

1 position at Hitachi Ltd?

2 **THE DEFENDANT (through the interpreter):** Currently,
3 I am the Executive Managing Director.

4 **THE COURT:** And were you the Executive Managing
5 Director during this period from April 1st, 2001 to March 31st,
6 2004?

7 **THE DEFENDANT (through the interpreter):** No, at that
8 time I was at the Hitachi headquarters. I used to be the audit
9 manager at the Hitachi headquarters.

10 **THE COURT:** When did you come over to Hitachi Ltd --
11 I mean, Hitachi Displays?

12 **THE DEFENDANT (through the interpreter):** In April of
13 2004.

14 **THE COURT:** So he wasn't there when this was
15 happening. So how does he know it happened?

16 **MR. HEMANN:** He's just been -- the Board of Directors
17 of the company, based on advice from legal counsel, both inside
18 and outside the company, reached a conclusion that the evidence
19 that the facts alleged by the Government and admitted by
20 Hitachi occurred. Mr. Hatanaka has simply been authorized by
21 the board to enter the plea on behalf of the company based on
22 the Board of Directors' conclusion as to what occurred.

23 **THE COURT:** And that's all agreeable to the
24 Government?

25 **MR. WARD:** It is, Your Honor.

1 **THE COURT:** Okay. Well, I find that the plea is
2 being voluntarily entered into, that there's a factual basis
3 for it, and that Hitachi is, in fact, guilty of -- Hitachi
4 Displays Ltd. is guilty of the offense charged in the
5 information. So I'll accept the plea.

6 **MR. HEMANN:** Thank you, Your Honor.

7 **THE COURT:** With respect to the plea agreement,
8 you've likewise requested that the sentence -- we'd proceed to
9 sentencing at this time; right?

10 **MR. HEMANN:** Yes, Your Honor. Thank you.

11 **MR. WARD:** Yes, Your Honor.

12 **THE COURT:** And have you, Mr. Hemann, explained to
13 Mr. Hatanaka that -- and to the company that ordinarily we
14 would do this in two steps. There would be a plea. There
15 would be time for a report to be prepared, and then we would
16 come back some weeks or months later and do the judgment and
17 sentencing.

18 You've explained that?

19 **MR. HEMANN:** Yes, Your Honor.

20 **THE COURT:** And you've explained to him that you're
21 asking me to do this on a somewhat truncated record and do it
22 today; is that right?

23 **MR. HEMANN:** Yes, Your Honor.

24 **THE COURT:** And have you explained to him that I'll
25 only do it if I feel there's enough evidence in the materials

1 supplied to me to make an intelligent decision?

2 **MR. HEMANN:** Yes, I have, Your Honor.

3 **THE COURT:** And they want me to go ahead; right?

4 **MR. HEMANN:** The company would like you to go ahead.
5 Yes, Your Honor.

6 **THE COURT:** I have reviewed the plea agreement. I
7 have reviewed the joint sentencing memo with request for
8 expedited sentence under Local Rule 32-1(b), and the
9 Government's motion for a downward departure, and I do find
10 that that's enough information to make an informed sentencing
11 decision. The guideline calculation would be as follows:

12 The base fine is 20 percent of affected commerce
13 under guidelines (2R1.1(d)(1)) and (8C2.4(b)). 20 percent of
14 the stipulated \$130 million of affected commerce would be
15 \$26 million.

16 The culpability score is computed thusly. The base
17 is computed under (8C2.5(a)), and that's five. Under
18 (8C2.5(b)(1)), based on involvement in or tolerance of criminal
19 activity, the score is raised by four points. Under (8C2.5(c))
20 prior history. There's zero-points. (8C2.5(d)) violation of
21 court orders. There's zero-points. (8C2.5(e)) obstruction of
22 justice. There's zero-points. (8C2.5(F)) effective program to
23 prevent and detect violations of law. There's zero-points.
24 However, for (8C2.5(g)(2)) self-reporting, cooperation, and
25 acceptance of responsibility, the score is reduced by two

1 points, generating a total culpability score of seven.

2 The maximum and minimum multipliers under (8C2.6) are
3 a maximum of 2.8 and a minimum of 1.4. The minimum and maximum
4 fines under (8C2.7) would be a minimum fine of \$36.4 million
5 and a maximum fine of \$72.8 million.

6 The Government has moved under (8C4.1) to depart
7 downward to a \$31 million based on Hitachi Displays'
8 substantial assistance in the TFT-LCD investigation. It
9 produced documents here and abroad, and it provided employees
10 for interviews and has agreed to continue the assistance. And
11 based upon that, it's the joint -- it's the motion of the
12 Government and joined in by the defendant that I depart
13 downward to the suggested fine of \$31 million and that there be
14 no probation and no restitution.

15 And the reason for no restitution is what, Mr. Ward?

16 **MR. WARD:** We believe that the victims and the
17 plaintiffs in the class action suit are well-situated to recoup
18 restitution in that case -- in this case. Excuse me.

19 **THE COURT:** And is there any limitation imposed by
20 the Government in Hitachi Displays' cooperation or provision of
21 information to the parties in the civil actions?

22 **MR. WARD:** There is not, Your Honor.

23 **THE COURT:** Okay. And is it your understanding that
24 they will continue -- that they will cooperate with the parties
25 in the civil litigation; is that your understanding?

1 **MR. WARD:** The Government's understanding is that
2 they are in discussions with the plaintiffs. The Government --

3 **THE COURT:** I don't mean settling, but I mean that
4 they will -- they will conform to their discovery only in that
5 case --

6 **MR. WARD:** Yes, Your Honor.

7 **THE COURT:** -- in those cases. And in any event, the
8 criminal proceedings don't compare in any way with Hitachi
9 Displays' ability to participate fully in the discovery process
10 if the civil litigation --

11 **MR. WARD:** They do not, Your Honor.

12 **MR. HEMANN:** Your Honor, with the caveat that the
13 criminal cases against some of the individual Hitachi employees
14 might have an impact on their decisions to take the Fifth if --
15 in the event of a deposition.

16 **THE COURT:** That being the two named individuals in
17 the plea?

18 **MR. HEMANN:** That being -- I suspect that the two
19 named individuals, if they were -- if their depositions were
20 noticed, might take the Fifth. I don't have any reason to
21 believe that others will.

22 **THE COURT:** That's my concern is whether there's
23 going to be some impairment of the ability to get information
24 based on that.

25 **MR. HEMANN:** Numerous of them are represented by

1 individual counsel. And that, obviously, is a decision they'll
2 have to make with -- in consultation of individual counsel.
3 The company is not in a position and won't be advising people
4 to take the Fifth. If that occurs, obviously, they will have
5 advice of independent counsel.

6 **THE COURT:** Okay. Well --

7 **MR. HEMANN:** So in short answer, nothing as between
8 in this agreement or any agreement that we've had with the
9 United States impedes in any way the discovery -- the normal
10 civil discovery obligations that the company has.

11 **THE COURT:** And I think that's appropriate since the
12 restitution, which otherwise might've been imposed through this
13 criminal judgment, is being forgone in light of the pending
14 civil action cases. It's important that those civil actions be
15 given any opportunity to proceed.

16 **MR. HEMANN:** And we've been working with Mr. Simon
17 and Mr. Scarpulla and the plaintiffs on conforming to our
18 discovery obligations and moving things as far as the civil
19 cases.

20 **THE COURT:** All right. Well, I'll accept the plea
21 agreement. I will accept the -- I will impose a sentencing in
22 accordance with it. I will not impose restitution, and I will
23 not impose provision.

24 In accordance with the Sentencing Reform Act of 1984,
25 the defendant Hitachi Displays Ltd. is hereby ordered to pay a

1 fine in the amount of \$31 million. The fine is payable in full
2 by June 6, 2009. It is further ordered that a special
3 assessment of \$400 be paid, and that is it.

4 Is there anything else?

5 **THE CLERK:** When is the special assessment due by?

6 **THE COURT:** Special assessment is due by June 6,
7 2009, as well.

8 **MR. HEMANN:** We actually have a check for \$400, Your
9 Honor. So we'll get that paid today.

10 **THE CLERK:** Are you going to do it today?

11 **MR. HEMANN:** Yeah.

12 **THE CLERK:** I have a form I need to give you.

13 **THE COURT:** Is there anything else, Mr. Ward, that we
14 need to --

15 **MR. WARD:** No, Your Honor. Thank you.

16 **MR. HEMANN:** Thank you very much, Your Honor.

17 **THE COURT:** Thank you.

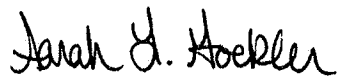
18 (Thereupon, this hearing was concluded.)
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CERTIFICATE OF REPORTER

I, SARAH L. GOEKLER, a Certified Shorthand Reporter, hereby certify that the foregoing proceedings were taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the said proceedings were thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: May 22, 2009.

A handwritten signature in cursive script, reading "Sarah L. Goekler", positioned above a horizontal line.

SARAH L. GOEKLER, CSR 13446